

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant.

Case No. 11-cv-06378

Judge Milton I. Shadur

CONSENT DECREE

THE LITIGATION

1. On September 13, 2011, the U.S. Equal Employment Opportunity Commission (“Plaintiff” or “EEOC”) filed suit against Bank of America Corporation under Title I of the Americans with Disabilities Act of 1990 (“ADA”) and Title I of the Civil Rights Act of 1991. EEOC alleged that Bank of America violated the ADA by failing or refusing to provide Jamal Williams (“Charging Party”) with a reasonable accommodation and terminating him because of his disability. On September 28, 2011, EEOC filed an amended Complaint against Bank of America, N.A. (“Bank of America” or “Defendant”) raising the same allegations.

2. On October 28, 2011, Bank of America filed an Answer denying the allegations of unlawful conduct in EEOC’s Complaint.

3. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be fully and finally resolved by entry of this Consent Decree (“Decree”).

4. Neither party makes any admission(s) regarding any claims or defenses raised during the litigation by entering into this Decree.

5. As used in this Decree, Managed Service Provider ("MSP") means the company or organization with which Bank of America has contracted to supply, directly or indirectly, temporary or staff augmentation services to Bank of America .

6. As used in this Decree, the term "temporary and contingent worker" means workers assigned to provide temporary or short term staff augmentation services to Bank of America through its designated MSP, currently Adecco (n/k/a Pontoon) and its designated suppliers.

7. Bank of America hereby represents that, presently, Adecco (n/k/a Pontoon) is the only MSP supplying temporary or short term staff augmentation services in the State of Illinois. Should Bank of America additionally or alternatively utilize (or become aware that it has utilized) any other MSP provider within the State of Illinois during the period this Decree is effective, Bank of America shall notify the EEOC of the name of that other provider, and that other provider shall be considered a successor to Adecco (n/k/a Pontoon) for purposes of this Decree.

8. The terms of this Decree shall apply to Bank of America facilities within the State of Illinois that use or have used the services of any temporary and contingent worker(s) in 2014 or during the period during which this Decree is effective.

9. This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by EEOC.

FINDINGS

10. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

- (a) this Court has jurisdiction over the subject matter of this action and the parties;
- (b) the terms of this Decree are adequate, fair, reasonable, equitable, and just;
- (c) the rights of EEOC, the Charging Party, Bank of America, and the public interest are adequately protected by this Decree;
- (d) this Decree conforms to the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person; and
- (e) entry of this Decree will further the objectives of the ADA and will be in the best interests of EEOC, the Charging Party, Bank of America, and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

INJUNCTION AGAINST DISCRIMINATION

11. Bank of America, and its officers, agents, employees, successors, and assigns are hereby enjoined from engaging, at Bank of America locations within the scope of this Decree, in any employment practice prohibited by Title I of the ADA, including failing or refusing to provide reasonable accommodations, through its contractual relationship with the MSP or through the Bank itself, to temporary or contingent workers. Bank of America is further enjoined from terminating the assignment of a temporary or contingent worker at any Bank of America location within the scope of this Decree because he or she has a disability or because of the need to provide a reasonable accommodation, assuming a reasonable accommodation exists.

INJUNCTION AGAINST RETALIATION

12. Bank of America, and its officers, agents, employees, successors, and assigns shall not engage in any form of retaliation at any Bank of America location within the scope of this Decree against any temporary or contingent worker because he or she has opposed any practice made unlawful under the ADA, filed a Charge of Discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted any rights under this Decree.

MONETARY RELIEF

13. Subject to the terms and conditions of this Decree, Bank of America shall make payment to the Charging Party in the amount of \$110,000, which represents alleged non-economic damages. Bank of America shall issue an IRS Form 1099 to the Charging Party for this payment.

14. No later than ten (10) business days after entry of this Decree and receipt by Bank of America of a copy of the Release Agreement executed by the Charging Party in the form set forth in Exhibit A to this Decree, whichever is later, Bank of America shall issue and mail to the Charging Party, by Certified Mail, a check for damages, in the amount specified in Paragraph 13. Contemporaneously, Bank of America shall submit a copy of the above-noted check to the EEOC. If any portion of the payment is not issued and mailed within ten (10) business days ("unpaid amount"), then for each business day beyond the twentieth business day that such portion remains unpaid, Bank of America shall additionally pay interest to the Charging Party, in the manner set forth above, an amount equal to the greater of \$50 or 0.1% of the unpaid amount.

EEO STATEMENT

15. No later than thirty (30) calendar days after approval and entry of this Decree, Bank of America shall post (and confirm to the EEOC that it has posted) an EEO statement on its web-based MSP vendor management system that is visible to Bank of America employees procuring temporary and contingent workers, representatives of the MSP or its supplier companies responsible for assigning temporary and contingent workers, and temporary and contingent workers assigned to Bank of America. The EEO statement will state that Bank of America is an equal opportunity employer, does not discriminate based on disability, and, through the MSP (including its suppliers) or Bank, will provide reasonable accommodations to qualified temporary and contingent workers with a disability.

ACCOMMODATION POLICY AND PROCEDURE FOR TEMPORARY AND CONTINGENT WORKERS

16. No later than thirty (30) calendar days after approval and entry of this Decree, Bank of America shall affirm a written policy and procedure governing accommodation requests submitted by the MSP (“Accommodation Policy and Procedure”) and shall maintain such Accommodation Policy and Procedure for the term of this Decree. Bank of America shall provide a copy of the Accommodation Policy and Procedure to the MSP. At a minimum, the Accommodation Policy and Procedure shall:

- (a) expressly state that Bank of America is an equal opportunity employer, does not discriminate based on disability, and, through the MSP or its suppliers or directly through the Bank, will provide reasonable accommodations to qualified temporary and contingent workers with a disability;
- (b) clearly explain how the MSP and its suppliers may request a reasonable accommodation on behalf of a candidate being considered for an assignment

at Bank of America and how the candidate may request a reasonable accommodation on his or her own either from the MSP or its supplier or from Bank of America;

- (c) specifically indicate that any of the following may constitute a reasonable accommodation depending on the circumstances: modified job duties, reassignment to a vacant position, and/or acquisition or modification of assistive devices or technologies; and
- (d) instruct the MSP to provide a copy of Bank of America's Accommodation Policy and Procedure to all suppliers, vendors, or contractors it uses to fill requests for temporary or contingent workers at the time it transmits a request from Bank of America to a supplier, vendor, or contractor.

ANTI-DISCRIMINATION POLICY

17. No later than thirty (30) calendar days after approval and entry of this Decree, Bank of America shall affirm a written policy against employment discrimination ("Anti-Discrimination Policy") and shall maintain such Anti-Discrimination Policy for the term of the Decree. Bank of America shall provide copies of the Anti-Discrimination Policy to all temporary or contingent workers assigned to Bank of America locations within the scope of this Decree no later than thirty (30) calendar days after the entry of this Decree or, for workers who begin assignments more than thirty (30) calendar days after the entry of this Decree, no later than when their assignment begins. At a minimum, the Anti-Discrimination Policy shall:

- (a) specifically prohibit all forms of discrimination prohibited by the ADA, including failing or refusing to provide reasonable accommodations to qualified employees with a disability;

- (b) expressly provide that the prohibition against disability discrimination extends to temporary and contingent workers;
- (c) explain that the MSP, its suppliers and temporary and contingent workers themselves may request a reasonable accommodation, clearly explain the process for requesting accommodation, and specifically indicate that any of the following may constitute a reasonable accommodation depending on the circumstances: modified job duties, reassignment to a vacant position, and/or acquisition or modification of assistive devices or technologies;
- (d) inform employees that they are entitled to make complaints or reports of unlawful employment discrimination to Bank of America and to the U.S. Equal Employment Opportunity Commission;
- (e) inform employees that Bank of America will investigate thoroughly and promptly all complaints and reports of unlawful employment discrimination and shall provide that employees who violate the Policy are subject to discipline up to and including termination.

18. No later than thirty (30) calendar days after entry of this Decree, Bank of America shall submit copies of its EEO Statement, Accommodation Policy and Procedure, and Anti-Discrimination Policy as described herein, with the understanding that these statements, procedures and policies relating to the MSP, its suppliers and temporary and contingent workers may be included in more comprehensive statements, procedures and policies addressing equal employment opportunity, non-discrimination and reasonable accommodation for Bank of America employees as well, so long as the statements and policies required by this Decree are

clearly labeled. The inclusion of this Paragraph does not represent EEOC's or the Court's approval of any Bank of America policy.

19. No later than forty-five (45) calendar days after entry of this Decree, Bank of America shall electronically post, for the term of the Decree, its Accommodation Policy and Procedure and Anti-Discrimination Policy on its web-based MSP vendor management system in a conspicuous location.

TRAINING

20. No later than sixty (60) calendar days after entry of this Decree, all Bank of America employees assigned to Bank of America locations within the scope of this Decree who have supervisory or managerial functions over temporary or contingent workers shall participate in a training session regarding the laws pertaining to employment discrimination, including the obligations of employers under Title I of the Americans with Disabilities Act. Bank of America shall repeat this training at least once every twelve (12) months for the duration of the Decree. The final training session required under this Paragraph shall take place no later than (60) calendar days before the term of the Decree expires. A registry of attendance shall be maintained for each training session required under this Paragraph.

21. Bank of America shall obtain EEOC's approval of its proposed trainer and the content he/she proposes to present before the commencement of each training session required under Paragraph 20, above. Bank of America shall submit the name, address, telephone number, resume and training proposal of its proposed trainer (including copies of all materials he/she proposes to display, distribute, or otherwise present) to the EEOC at least twenty (20) business days prior to the proposed date of each training session. EEOC shall have ten (10) business days from the date it receives the information described above to accept or reject the proposed trainer

and/or the content he/she proposes to present. EEOC shall not unreasonably withhold its approval of Bank of America's training proposal. In the event EEOC does not approve Bank of America's proposed trainer and/or the content he/she proposes to present, Bank of America shall have five (5) business days to identify an alternate trainer and/or revise the content its trainer proposes to present. EEOC shall then have five (5) business days from the date it receives the information described above to accept or reject the alternate trainer and/or the content he/she proposes to present. If the parties cannot agree on a trainer through this process, they may seek the Court's assistance under Paragraph 28, below.

22. No later than five (5) business days after each training session described in Paragraph 20, above, takes place, Bank of America shall certify to the EEOC in writing that the required training session has taken place and the required personnel have attended. Every certification of training described in this Paragraph shall include: (a) the date, location, and duration of the training; (b) a copy of the registry of attendance, which shall include the name and position of each person trained; and (c) copies of any and all pamphlets, brochures, outlines or other written materials provided or displayed to the personnel attending each training session.

POSTING AND DISTRIBUTION OF NOTICE

23. No later than ten (10) business days after entry of this Decree, Bank of America shall post copies of the Notice attached as Exhibit B to this Decree on all bulletin boards or posting areas usually used for communicating with employees assigned to Bank of America locations within the scope of this Decree. The Notice shall remain posted for the term of this Decree. Bank of America shall take all reasonable steps to ensure that the posting is not altered, defaced, or covered by any other material. Bank of America shall permit a representative of

EEOC to enter Bank of America's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

24. No later than ten (10) business days after entry of this Decree, Bank of America shall certify to EEOC in writing that the Notice has been properly posted and distributed in accordance with Paragraph 23 above.

RECORD KEEPING

25. During the term of this Decree, Bank of America shall maintain and make available for inspection and copying by the EEOC written records of every request for an accommodation made by any temporary or contingent worker with a physical or mental impairment assigned to any Bank of America location within the scope of this Decree as well as every complaint or report of disability discrimination made by any temporary or contingent worker within the scope of this Decree. For each such accommodation request and complaint or report of disability discrimination, such records shall include: (a) the name of the individual requesting an accommodation or complaining and/or reporting disability discrimination and the individual's address and telephone number; (b) the identity of the MSP and, as applicable, supplier to the MSP; (c) the date of the accommodation request, complaint, or report; (d) a written description of the requested accommodation or what was alleged in the complaint or report of discrimination, including whether the allegations pertain to Bank of America, one or more temporary staffing agencies, or both; (e) a written description of Bank of America's efforts to accommodate the temporary or contingent worker, or the resolution or outcome of the complaint or report of discrimination, including a description of what actions, if any, Bank of America took; and (f) if the request, complaint, or report was made in written form, a copy thereof.

26. Bank of America shall require all personnel within its employ whom the EEOC requests for purposes of verifying compliance with this Decree to cooperate reasonably with the EEOC and to be interviewed.

REPORTING

27. Bank of America shall furnish to the EEOC the following written reports semi-annually ("Semi-Annual Report") during the period in which this Decree is effective. The first Semi-Annual Report shall be due six months after entry of the Decree. Subsequent Semi-Annual Reports shall be due every six (6) months thereafter, except that the final Semi-Annual Report shall be due one (1) month prior to the expiration of this Decree. The Semi-Annual Report shall contain:

- (a) copies of all records described in Paragraph 25, above, for the six month period preceding the Semi-Annual Report or a certification by Bank of America that no such requests for accommodation or complaints or reports of disability discrimination were received during that period;
- (b) a certification by Bank of America that the Notice required to be posted pursuant to Paragraph 23 of the Decree remained posted in the manner required by that Paragraph during the entire six month period preceding the Semi-Annual Report.

DISPUTE RESOLUTION

28. If during the term of this Decree either party to the Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or satisfy the complaining party that the

alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief, including modification of this Decree or other relief that the Court determines to be appropriate.

DURATION AND RETENTION OF JURISDICTION

29. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a term of two (2) years immediately following the approval and entry of the Decree, unless extended by order of this Court, provided, however, that if at the end of the term of the Decree, any disputes under Paragraph 28, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

30. Each party to this Decree shall bear its own expenses, attorney's fees, and costs.
31. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors and assigns of Bank of America
32. Charging Party has provided an up-to-date IRS Form W-9 to Bank of America.
33. When this Decree requires a certification by Bank of America of any fact(s), such certification shall be made under oath or penalty of perjury by an officer or management employee of Bank of America. Prior to any sale or other transfer of Bank of America's business or sale or other transfer of all or a substantial portion of Bank of America's assets, Bank of America shall provide a copy of this Decree to any potential purchaser, potential transferee, or other potential successor.

34. When this Decree requires the submission by Bank of America of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Bank of America Consent Decree Compliance – Legal Unit; U.S. Equal Employment Opportunity Commission; 500 West Madison Street, Suite 2000; Chicago, Illinois 60661. By advance agreement of the parties, materials may alternatively be submitted by electronic mail.

SO ORDERED, ADJUDGED, and DECREED on this 18 day of December 2014:



The Honorable Milton I. Shadur
United States District Judge